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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CLARY et al.

Art Unit: 3636

Application No.: 09/765,098

Examiner: Vu, Stephen A.

Filing Date: January 18, 2001

Re: ARTICULATING CHAIR

* * *

SUPPLEMENTAL APPEAL BRIEF

DATE: April 8, 2004

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

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Sir:

This is a Supplemental Appeal Brief required under 37 C.F.R. 1.193(b)(2)(ii) when requesting reinstatement of an appeal. The Applicant continues to appeal the rejection of Claim 1 in the subject application.

RELATED APPEALS AND INTERFERENCES

There currently are no related appeals or interferences. The original Notice of Appeal in this case was filed on December 22, 2002 with the original Appeal Brief filed on February 24, 2003. On May 28, 2003, the Examiner re-opened prosecution, prior to the appeal being heard, and again rejected Claim 1. The applicant responded on

September 29, 2003 (with a one-month extension). On December 8, 2003, the Examiner mailed a second final Office Action.

STATUS OF CLAIMS

Claim 1 was amended on September 29, 2003, after a non-final rejection. Claim 1 is the only pending in this application. The applicant hereby appeals the final rejection of amended Claim 1. Please see Appendix A for a copy of the claim under Appeal.

SUMMARY OF INVENTIONS

A complete summary of the invention is included in the original Appeal Brief of February 24, 2003.

STATUS OF AMENDMENTS AFTER FINAL REJECTION

The applicant filed no amendments after the December 8, 2003, Final Office Action.

SUMMARY OF PROSECUTION HISTORY

As stated in the original Appeal Brief of February 24, 2003, the application was filed on 18 January 2001. A first Office Action was mailed on 13 February 2002, and applicant timely responded with amendments. A second and final Office Action was mailed on 22 July 2002. Applicant initiated a telephone interview with the Examiner on December 9, 2002, and soon after responded with an Amendment filed under 37 C.F.R. 1.116 on 23 December 2002 (together with Notice of Appeal). Per Advisory Action

dated 31 January 2003, the amendment filed subsequent to final rejection was entered.

An appeal brief was filed on February 24, 2003, appealing the final rejection of the only pending claim (Claim 1).

On May 28, 2003, the Examiner re-opened prosecution, prior to the appeal being heard, and again rejected Claim 1. The applicant responded on September 29, 2003 (with a one-month extension). On December 8, 2003, the Examiner mailed a second final Office Action.

SUPPLEMENTAL ISSUES

1. Whether the subject matter of the present Claim 1 is obvious under 35 U.S.C §103(a) over the newly cited combination (U.S. Patent No. 4,410,214 to Geschwender in view of U.S. Patent No. 4,657,302 to Snyder and U.S. Patent No. 5,435,203 to Spease et al.)?

GROUPING OF CLAIMS

Claim 1 is the only pending claim.

APPELLANT'S ARGUMENT

1. Summary of the Cited Prior Art.

The Examiner rejected Claim 1 under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 4,410,214 to Geschwender in view of U.S. Patent No. 4,657,302 to Snyder and U.S. Patent No. 5,435,203 to Spease et al.

Geschwender '214 shows an articulating chair (1) comprising a knockdown frame having a pair of separate U-shaped frame portions (5, 7).

Snyder '302 shows a lounge construction for grouping a plurality of chairs together.

Spease '203 shows a motion transmitting stick for a remote control assembly.

2. Appellant's Argument.

The Appellant has claimed an articulating chair having chamfered frame portions and zinc plated members to ease the process of assembly and to reduce the likelihood of tearing the fabric, of the cover.

Geschwender '214 does not teach or suggest chamfered ends or Zinc plating, neither of which are inherently obvious improvements. One skilled in the art would not readily appreciate the lubricant value of the Zinc plate relative to the fabric cover, or the combined ability of the Zinc plate and chamfered tubes to prevent tearing and increase longevity. The Examiner cites Snyder '302 and Spease '203 as bridging the gap. They do not.

The Snyder '302 patent discloses a frusto-conical end of a rod member to be inserted into a socket of a tubular member. The Appellant's claim 1, as amended, recites "...a pair of generally L-shaped connectors adapted for a *telescopic fit* into the *chamfered ends of said frame portions* to form a *rigid* generally L-shaped frame...". In the Appellant's invention the frame portions, which receive the L-shaped connectors, are chamfered as opposed to the configuration of the Snyder '302 patent, wherein the member to be inserted is chamfered. The configuration of the Snyder '302 patent serves to connect the members together (see col. 3, ln. 68). The Appellant's claimed

configuration, on the other hand, is a telescopic fit, which forms a rigid frame. The Snyder '302 patent discloses a means of connecting neighboring chairs together but it does not disclose the use of a chamfered tubular member to telescopically join members to form a rigid frame of a single chair.

The Spease patent '203 discloses the use of zinc plating in an unrelated art (a stick for a remote controller). Adjacent parts of a locking mechanism, which frequently move with respect to one another, are lubricated by zinc plating. The parts are a cable and a housing (col. 3, ln. 63). The Appellant's claim 1 recites "...all of said U-shaped frame portions and L-shaped connectors being Zinc plated for ease of assembly". The zinc plating covers the surfaces of the frame portions and the L-shaped connectors which engage each other during assembly and disassembly. The zinc plating also covers the surfaces of the frame portions which contact the fabric cover during use of the article and during removal or installation of the cover. The unique use of zinc plating to lubricate the frame to ease assembly and to prolong the life of the fabric as claimed by the Appellant and is not disclosed by the prior art.

The combination of the three references would not yield the elements of Appellant's invention, as claimed. The inventive combination cannot be anticipated by finding individual features separately in the prior art and combining them in a piecemeal manner to show obviousness. See In re Kamm and Young, 452 F.2d 1052, 1056-57, 17 USPQ 298, 301-02 (CCPA 1972) affd. (citing In re Rothermel, 47 CCPA 866, 870, 276 F. 2d 393, 396, 125 USPQ 328, 331 (1960)), in which the Court held that "The rejection here runs afoul of a basic mandate inherent in section 103 - that piecemeal reconstruction of the prior art patents in the light of appellants disclosure shall not be the basis for a

holding of obviousness. See also Schnell et al. v. The Albright-Nell Co. et al., 146 USPQ 322, in which the Court held that “Improvement over prior art, even though it be simple or involves only a reversing of certain parts, is patentable unless prior art shows that improvement is obvious.” In the present application, the combination of a removable fabric cover, with zinc plated and chamfered frame portions, work together in a synergistic manner to ease assembly and prevent tearing of the fabric. The combination of elements is not present or suggested by the prior art references.

Moreover, as per the Manual for Patent Examining Procedures §2142, “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.¹ Second, there must be a reasonable expectation of success². Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.³” None of these criteria were met. Most significantly, there is no suggestion or motivation in the cited prior art or in the knowledge generally available to one of ordinary skill in the art to combine the zinc plating used in the Snyder ‘302 patent on a stick for a remote controller to the articulating chair of the present

¹ It is well established that “before a conclusion of obviousness may be based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references” Pro-Mold and Tool Co. v. Great Lakes Plastics Inc., 37 U.S.P.Q. 2d 1626, 1629 (Fed. Cir. 1996).

² See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

³ See MPEP §2143.03 “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under **35 U.S.C. 103**, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).”

invention because there is no suggestion or inherent motivation to look to Snyder for the purpose of easing assembly or for prolong fabric life.

3. Response to Examiner's Remarks. The Examiner argues that "one of ordinary skill in the art at the time the invention can modify the U-shaped frame portions of Geschwender'214's chair to have chamfered ends as taught by Snyder in or to facilitate receipt of the frame portions within the L-shaped connectors. In addition, one of ordinary skill in the art can manufacture the U-shaped frame portions and L-shaped connectors of Geschewender'214's chair via Zinc plating in order to provide functional durability under the stress of use." As stated above, the Appellant contends that it would not have been obvious to modify the U-shaped frame portions of the Geschewender '214 chair as taught by the Snyder '302 patent, because the Snyder '302 patent discloses a means of connecting neighboring chairs together not the use of a chamfered tubular member to telescopically join members to form a rigid frame of a single chair. Additionally, it would not have been obvious to manufacture the U-shaped frame portions and L-shaped connectors of Geschewender'214's chair with Zinc plating because while zinc plating may have been used with on electronic components such as the Spease '203 remote controller stick, it would not have been obvious to use this material in constructing a chair. The motivations for doing so (easing assembly and prolonging fabric life) are not apparent or inherent in Spease '203 or the other cited references.

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Application No. 09/765,098 by Clary et al.

Examiner: Stephen A. Vu

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For the reasons set forth herein, it is believed that the invention disclosed in this application is clearly and patentably distinguished over the prior art and is in proper condition for allowance. Therefore, reversal of the Examiner's decision is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'PMR', with a long horizontal flourish extending to the right.

Pamela M. Riley, Reg. No. 40,146

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APPENDIX A

Claim 1: An articulating chair, comprising:

a knockdown frame including a pair of separate generally U-shaped frame portions, one constituting a seat portion and the other constituting a backrest frame portion, each of said U-shaped frame portions having two chamfered ends, and a pair of generally L-shaped connectors adapted for a telescopic fit into the chamfered ends of said frame portions to form a rigid generally L-shaped frame, and all of said U-shaped frame portions and L-shaped connectors being Zinc plated for ease of assembly;

a removable cover formed to fit over the frame and to hold said knockdown frame in assembly, said cover including a top panel section sewn against a bottom panel section, a side panel section sewn there between, and a cushion enclosed there between, said cover being insertable over said frame and swingable relative to the frame;

whereby said chair may be assembled and positioned on a surface in one of a first position in which the seat portion of the frame rests flat with the backrest portion extending upward to provide a backrest, said cushion extending forwardly from the frame to provide a seat, and a second position said chair being adapted to be overturned from said first position to a second position in which the seat portion of the frame extends upwardly and the backrest portion slopes downwardly with the cushion resting thereon to present a reclining surface.